

Background & Status of Advanced Notice of Proposed Rulemaking (ANPR) on Whale Watching

**NOAA Fisheries - Northeast Region
Protected Resources Division**

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Marine Mammals and the Law

- MMPA prohibits “take” of all marine mammals
 - “**take**”: to **harass**, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal”
 - “**harassment**”: any act of pursuit, torment, or annoyance which has the **potential to injure** a marine mammal or marine mammal stock in the wild; or has the **potential to disturb** a marine mammal or marine mammals stock in the wild by causing disruption of behavioral patterns, including , but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.”
- ESA also prohibits take but definition includes terms such as “harm,” “pursue,” or trap”

Whale Watch Advisory Group

- 1998 whale watch vessel strikes and 1999 harassment concerns
- Formed in 1999 by NEIT Ship Strike Sub-Committee
- Recommended that NMFS:
 - Revise its 1985 whale watch guidelines
 - Prepare an Advanced Notice of Proposed Rulemaking (ANPR) to solicit comments on appropriateness of codifying operational procedures for whale watch vessels

Highlights of Revised 1999 Whale Watch Guidelines

- Speed reductions within 2 miles
 - 13 knots between 1- 2 miles
 - 10 knots between 1/2 - 1 mile
 - 7 knots 1/2 mile or less
- Post dedicated lookouts
- Avoid head-on approaches
- No approach within 100 feet

» NOTE: 500 yard no approach distance regulation for right whales (February 1997)

January 4, 2000, ANPR

- Published to request comments on 1) whether existing whale protection measures were adequate to address potential threat of injury and mortality to large whales by vessels engaged in whale watching, and if not, 2) what whale protection measures are needed.

ANPR (continued)

- NMFS offered the following as possible options:
 - further revisions of the existing guidelines
 - codification of the whale watch guidelines
 - minimum approach rule similar to right whale rule
 - creation of an operator permit or certification program

Various NMFS Regional Regulations (R) and Guidelines (G)

- Alaska (R)
 - 100 yard approach limit for humpbacks
 - slow, safe speed requirement near humpback whales
- Hawaii (R)
 - 100 yard approach limit for humpbacks
- Southeast (G)
 - 100 yard approach limit for humpbacks
- Other Species (G)
 - 50 yard approach limit for dolphins

Atlantic Large Whale Take Reduction Plan

Background and Recent Regulations

**NOAA Fisheries - Northeast Region
Protected Resources Division**

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Marine Mammal Protection Act

- The 1994 Amendments to the Marine Mammal Protection Act (MMPA), made a number of changes in the **regulations governing the incidental taking of marine mammals in the course of commercial fishing operations**, including:
 - establishment of **take reduction teams** for **strategic stocks** of marine mammals which interact with certain fisheries
 - develop and implement **take reduction plans**

Take Reduction Plan Goals

- **Immediate Goal** “...**reduce**, within 6 months of its implementation, **incidental mortality or serious injury** of marine mammals incidentally taken in commercial fishing operations to **levels less than PBR...**”
- **Long-Term Goal** “...to **reduce**, within 5 years of its implementation, the **incidental mortality or serious injury** of marine mammals...to **insignificant levels approaching a zero** mortality and serious injury rate...”

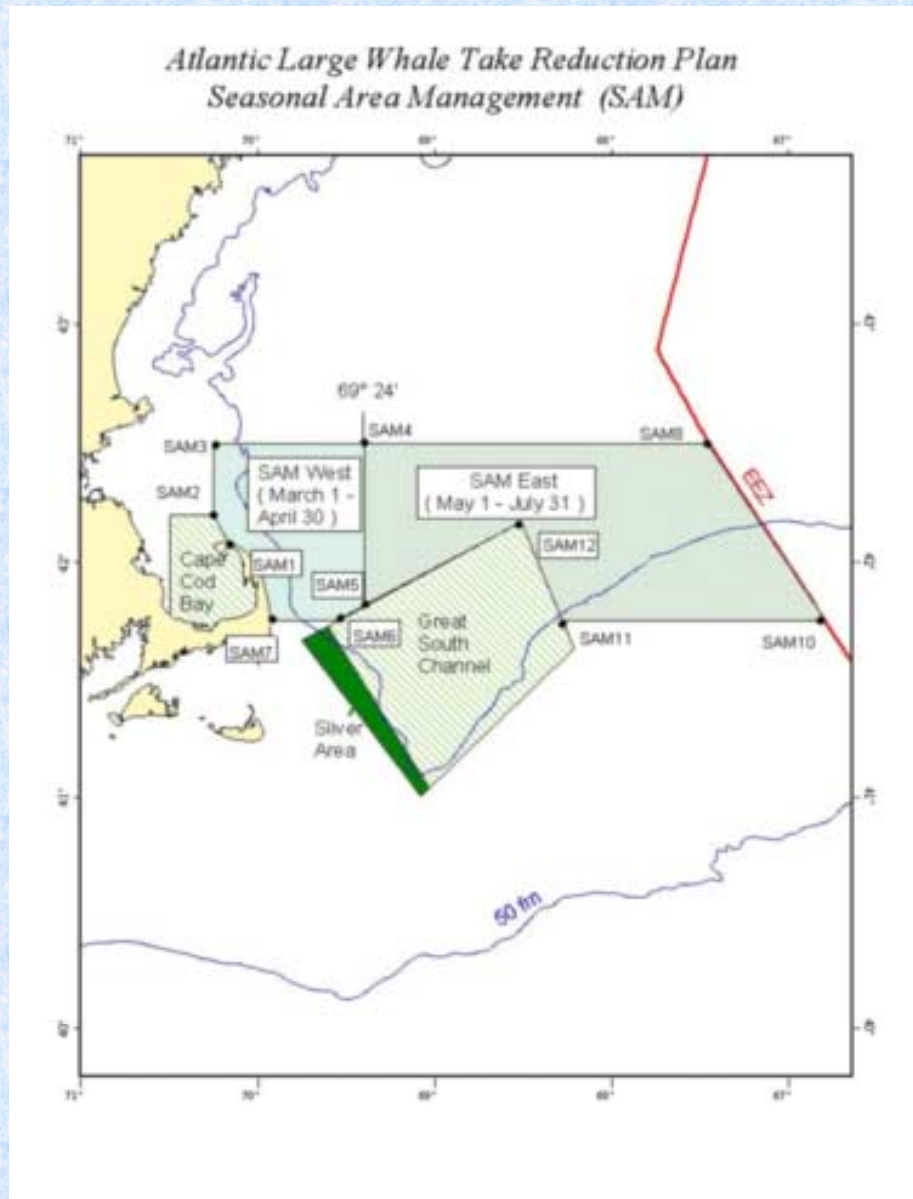
Atlantic Large Whale Take Reduction Team and Plan (ALWTRT/P)

- Established in 1996
 - **Purpose:** to develop a plan for reducing the incidental take of **right, humpback, fin and minke whales** in the **South Atlantic shark gillnet fishery, the Northeast and Mid-Atlantic lobster trap/pot fishery, the Mid-Atlantic coastal gillnet fishery, and the Northeast sink gillnet fishery**
 - **Composition:** fishermen, environmental groups, gear experts, state and federal fishery managers, biologists, and other interested parties
 - **Plan:** Gear modification, time/area closure, disentanglement, research
- Ongoing actions pursuant to ALWTRP and ESA Section 7 consultation include:
 - Regulatory Program: **SAM, DAM**, Gear Modifications
 - Non-Regulatory Program: Gear research and workshops

2002 ALWTRP Regulations

- **Seasonal Area Management (SAM) Program**
 - Effective on March 1, 2002.
 - Establishes two SAM areas:
 - SAM West – March 1 through April 30
 - SAM East – May 1 through July 31
 - Major gear modifications include:
 - Ground lines and buoy lines must be made entirely of either sinking or neutrally buoyant line.
 - No more than one buoy line per trawl/string may be used.
 - Lower weak link breaking strength.
 - Gillnet net panels must have five 1,100 lbs weak links.
 - All anchored gillnets must be anchored with the holding power of a 22 lb Danforth-style anchor.

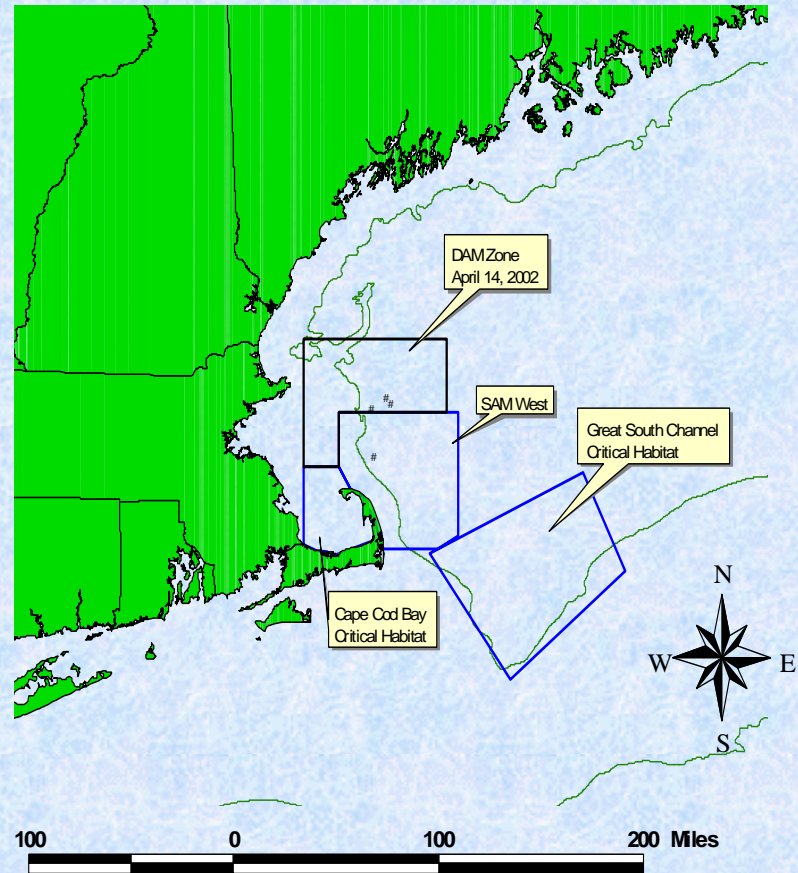
SAM Areas



2002 ALWTRP Regulations

- **Dynamic Area Management (DAM) Program**
 - Effective on February 8, 2002.
 - DAM zone triggered by a sighting of three or more right whales within a 75 square nautical mile area in waters north of 40° N. latitude
 - Once DAM zone triggered, for a 15-day period NMFS authorized to:
 - Require the temporary removal of lobster trap/pot and anchored gillnet fishing and require no setting of gear
 - Issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear, and asking fishermen not to set any new gear;
 - Allow lobster trap/pot and anchored gillnet fishing with gear determined by NMFS to sufficiently reduce the risk of entanglement.

DAM Zone from April 14, 2002 Sighting of Eight (8) North Atlantic Right Whales

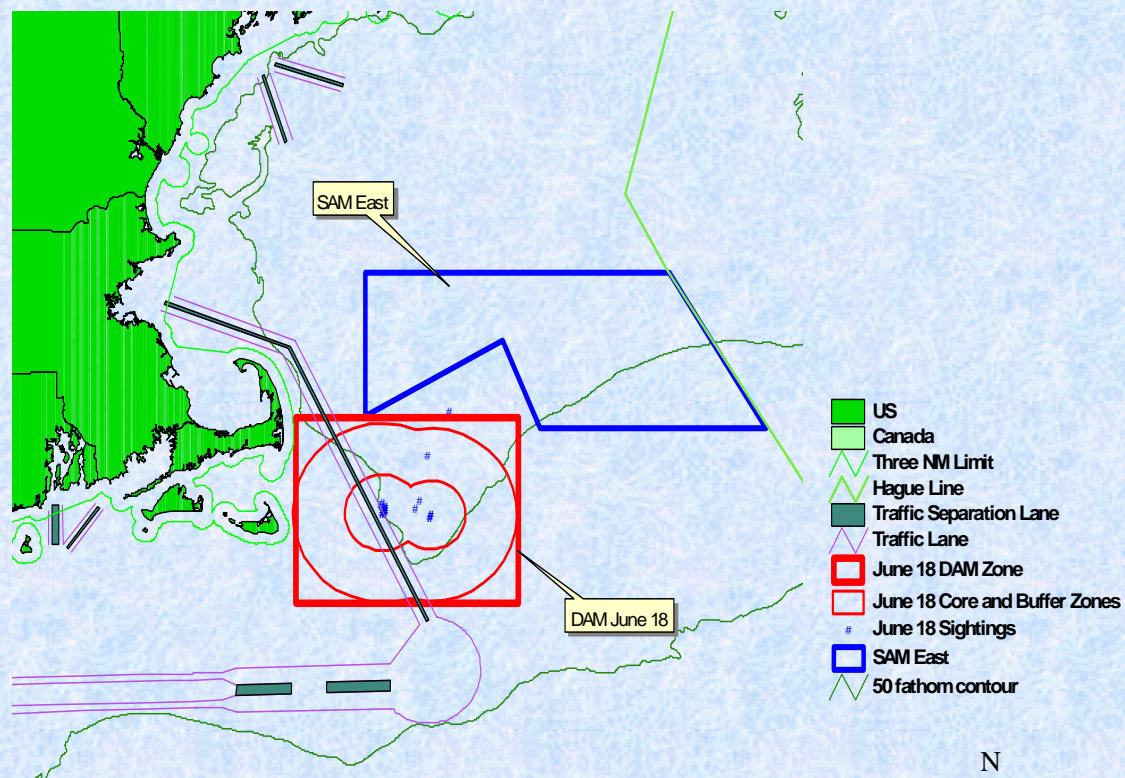


April - May 2002

*April- 1,100 square nautical mile area

*May- 1,700 square nautical mile area

DAM Zone from June 18, 2002 Sighting of 77 North Atlantic Right Whales in the Great South Channel



90 0 90 180 Miles

July 2002

*3,500 square nautical mile area

Future ALWTRP Plans

- Technical Amendment
- DAM Gear Modification Rulemaking
- Gear Workshop meetings in 2002
 - Mid-Atlantic
 - Northeast
- Take Reduction Team meeting
- Develop Comprehensive Environmental Impact Statement (EIS) for SAM
 - Scoping meetings
 - Public Hearings on Draft EIS